

AMENDED IN ASSEMBLY MARCH 30, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2956**

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**Introduced by Assembly Member Lieu**

February 24, 2006

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An act ~~relating to prescription drugs~~ to amend Sections 502.6 and 530.5 of the Penal Code, relating to identity.

LEGISLATIVE COUNSEL'S DIGEST

AB 2956, as amended, Lieu. ~~Prescription drugs; Medicare; Identity theft.~~

*Existing law provides that any person who uses a scanning device with specified intent to access, read, or obtain information encoded on the magnetic strip of a payment card without the permission of the authorized user is punishable by a fine not to exceed \$1,000, imprisonment in a county jail not to exceed one year, or both.*

*This bill would instead provide that this crime is punishable by a fine not exceeding \$2,500, imprisonment in a county jail not to exceed one year, or both.*

*Existing law provides that any person who with the intent to defraud acquires, transfers, or retains possession of the personal identifying information of another person, is guilty of a crime punishable by a fine not to exceed \$1,000, imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.*

*This bill would provide that every person who, with intended to defraud, acquires, retains possession of, sells, transfers, or conveys, the personal information of another without that person's consent, is punishable, based upon the number of person from whom personal identifying information was taken, by a fine of up to \$1,000, \$2,000,*

or \$5,000, imprisonment in a county jail not to exceed one year, or by both fine and imprisonment, as specified.

Because this bill would expand the definition of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides for the federal Medicare Program, which provides health care benefits, including prescription drug benefits, to persons 65 years of age and older and other specified persons.~~

~~This bill would state the intent of the Legislature to enact legislation to establish a statewide program to aid seniors in understanding the prescription drug benefit under the Medicare Program.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 502.6 of the Penal Code is amended to  
2     read:

3     502.6. (a) Any person who knowingly, willfully, and with  
4     the intent to defraud, possesses a scanning device, or who  
5     knowingly, willfully, and with intent to defraud, uses a scanning  
6     device to access, read, obtain, memorize or store, temporarily or  
7     permanently, information encoded on the magnetic strip or stripe  
8     of a payment card without the permission of the authorized user  
9     of the payment card is guilty of a misdemeanor, punishable by a  
10    ~~term~~ fine not exceeding two thousand five hundred dollars  
11    (\$2,500), imprisonment in a county jail not to exceed one year, ~~or~~  
12    ~~a fine of one thousand dollars (\$1,000), or both the~~ or by both  
13    that fine and imprisonment ~~and fine~~.

14    (b) Any person who knowingly, willfully, and with the intent  
15    to defraud, possesses a reencoder, or who knowingly, willfully,  
16    and with intent to defraud, uses a reencoder to place encoded  
17    information on the magnetic strip or stripe of a payment card or  
18    any electronic medium that allows an authorized transaction to  
19    occur, without the permission of the authorized user of the

1 payment card from which the information is being reencoded is  
2 guilty of a misdemeanor, punishable by a term in a county jail  
3 not to exceed one year, or a fine of one thousand dollars  
4 (\$1,000), or both the imprisonment and fine.

5 (c) Any scanning device or reencoder described in subdivision  
6 (e) owned by the defendant and possessed or used in violation of  
7 subdivision (a) or (b) may be seized and be destroyed as  
8 contraband by the sheriff of the county in which the scanning  
9 device or reencoder was seized.

10 (d) Any computer, computer system, computer network, or  
11 any software or data, owned by the defendant, which is used  
12 during the commission of any public offense described in this  
13 section or any computer, owned by the defendant, which is used  
14 as a repository for the storage of software or data illegally  
15 obtained in violation of this section shall be subject to forfeiture.

16 (e) As used in this section, the following definitions apply:

17 (1) "Scanning device" means a scanner, reader, or any other  
18 electronic device that is used to access, read, scan, obtain,  
19 memorize, or store, temporarily or permanently, information  
20 encoded on the magnetic strip or stripe of a payment card.

21 (2) "Reencoder" means an electronic device that places  
22 encoded information from the magnetic strip or stripe of a  
23 payment card on to the magnetic strip or stripe of a different  
24 payment card.

25 (3) "Payment card" means a credit card, debit card, or any  
26 other card that is issued to an authorized user and that allows the  
27 user to obtain, purchase, or receive goods, services, money, or  
28 anything else of value.

29 (f) Nothing in this section shall preclude prosecution under  
30 any other provision of law.

31 *SEC. 2. Section 530.5 of the Penal Code is amended to read:*

32 530.5. (a) Every person who willfully obtains personal  
33 identifying information, as defined in subdivision (b), of another  
34 person, and uses that information for any unlawful purpose,  
35 including to obtain, or attempt to obtain, credit, goods, services,  
36 or medical information in the name of the other person without  
37 the consent of that person, is guilty of a public offense, and upon  
38 conviction therefor, shall be punished either by imprisonment in  
39 a county jail not to exceed one year, a fine not to exceed one  
40 thousand dollars (\$1,000), or both that imprisonment and fine, or

1 by imprisonment in the state prison, a fine not to exceed ten  
2 thousand dollars (\$10,000), or both that imprisonment and fine.

3 (b) "Personal identifying information," as used in this section,  
4 means the name, address, telephone number, health insurance  
5 identification number, taxpayer identification number, school  
6 identification number, state or federal driver's license number, or  
7 identification number, social security number, place of  
8 employment, employee identification number, mother's maiden  
9 name, demand deposit account number, savings account number,  
10 checking account number, PIN (personal identification number)  
11 or password, alien registration number, government passport  
12 number, date of birth, unique biometric data including  
13 fingerprint, facial scan identifiers, voiceprint, retina or iris image,  
14 or other unique physical representation, unique electronic data  
15 including identification number, address, or routing code,  
16 telecommunication identifying information or access device,  
17 information contained in a birth or death certificate, or credit card  
18 number of a person, or an equivalent form of identification.

19 (c) In any case in which a person willfully obtains personal  
20 identifying information of another person, uses that information  
21 to commit a crime in addition to a violation of subdivision (a),  
22 and is convicted of that crime, the court records shall reflect that  
23 the person whose identity was falsely used to commit the crime  
24 did not commit the crime.

25 (d) Every person who, with the intent to defraud, acquires,  
26 conveys, sells, traffics, transfers, or retains possession of the  
27 personal identifying information, as defined in subdivision (b), of  
28 another person is guilty of a public offense, and upon conviction  
29 therefor, shall be punished ~~by~~ as follows:

30 (1) *If the personal identifying information is from fewer than*  
31 *10 persons, by a fine not to exceed one thousand dollars*  
32 *(\$1,000), imprisonment in a county jail not to exceed one year, or*  
33 ~~*a fine not to exceed one thousand dollars (\$1,000), or by both*~~  
34 ~~*that fine and imprisonment and fine.*~~

35 (2) *If the personal identifying information is from at least 10*  
36 *persons, but fewer than 100 persons, by a fine not exceeding two*  
37 *thousand dollars (\$2,000), imprisonment in a county jail not to*  
38 *exceed one year, or by both that fine and imprisonment.*

39 (3) *If the personal identifying information is from 100 or more*  
40 *persons, by a fine not exceeding five thousand dollars (\$5,000),*

1 *imprisonment in a county jail not to exceed one year, or by both*  
2 *that fine and imprisonment.*

3 (e) Every person who, with the intent to defraud, acquires,  
4 transfers, or retains possession of the personal identifying  
5 information, as defined in subdivision (b), of another person who  
6 is deployed to a location outside of the state is guilty of a public  
7 offense, and upon conviction therefor, shall be punished by  
8 imprisonment in a county jail not to exceed one year, or a fine  
9 not to exceed one thousand five hundred dollars (\$1,500), or by  
10 both that imprisonment and fine.

11 (f) For purposes of this section, “deployed” means that the  
12 person has been ordered to serve temporary military duty during  
13 a period when a presidential executive order specifies that the  
14 United States is engaged in combat or homeland defense and he  
15 or she is either a member of the armed forces, or is a member of  
16 the armed forces reserve or the National Guard, who has been  
17 called to active duty or active service. It does not include  
18 temporary duty for the sole purpose of training or processing or a  
19 permanent change of station.

20 (g) For purposes of this section, “person” means a natural  
21 person, firm, association, organization, partnership, business  
22 trust, company, corporation, limited liability company, or public  
23 entity.

24 *SEC. 3. No reimbursement is required by this act pursuant to*  
25 *Section 6 of Article XIII B of the California Constitution because*  
26 *the only costs that may be incurred by a local agency or school*  
27 *district will be incurred because this act creates a new crime or*  
28 *infraction, eliminates a crime or infraction, or changes the*  
29 *penalty for a crime or infraction, within the meaning of Section*  
30 *17556 of the Government Code, or changes the definition of a*  
31 *crime within the meaning of Section 6 of Article XIII B of the*  
32 *California Constitution.*

33 ~~SECTION 1. It is the intent of the Legislature to enact~~  
34 ~~legislation to establish a statewide program to aid seniors in~~  
35 ~~understanding the prescription drug benefit under the Medicare~~  
36 ~~Program.~~